

LFC Requestor: LEGER, Jeannae

2025 LEGISLATIVE SESSION
AGENCY BILL ANALYSIS

Section I: General

Chamber: House

Category: Bill

Number: HB358

Type: Introduced

Date (of THIS analysis): 2/12/2025

Sponsor(s): Randall T. Pettigrew

Short Title: Interim Administrative Rules Oversight Committee

Reviewing Agency: Agency 665 - Department of Health

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Section II: Fiscal Impact

APPROPRIATION (dollars in thousands)

Appropriation Contained		Recurring or Nonrecurring	Fund Affected
FY 25	FY 26		
\$0	\$0	N/A	N/A

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY 25	FY 26	FY 27		
\$0	\$0	\$0	N/A	N/A

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY 25	FY 26	FY 27	3 Year Total Cost	Recurring or Non-recurring	Fund Affected
Total	\$0	\$0	\$0	\$0	N/A	N/A

Section III: Relationship to other legislation

Duplicates: None

Conflicts with: None

Companion to: None

Relates to: HB409 from the 2023 session

Duplicates/Relates to an Appropriation in the General Appropriation Act: N/A

Section IV: Narrative

1. BILL SUMMARY

a) Synopsis

House Bill 358 (HB358) proposes to create a new section within Chapter 2 of the New Mexico statutes, which would create an “interim administrative rule oversight committee” comprised of 12 members, including an equal number of legislators from majority and minority parties in each house of the Legislature.

The committee would meet no less than once per month during the interim between legislative sessions to review administrative rules proposed by executive agencies. The committee would make recommendations to the proposing executive agency and would recommend to the Legislature changes to statutes authorizing rulemaking. The committee would recommend to the Legislature whether to amend or repeal a statute authorizing an agency to promulgate rules.

HB358 proposes to amend the State Rules Act to require that executive agencies generate “fiscal impact statements” concerning proposed rules that are anticipated to have a fiscal impact of greater than one million dollars (\$1,000,000). The fiscal impact statements would be required to include a statement of the fiscal impact of a proposed rule on agencies, municipalities, counties, business sectors, and “other entities that will be impacted by the proposed rule”, “the necessity of the rule”, “a statement of whether and how the rule is consistent with the legislative intent of the authorizing statute”, and “whether the rule amounts to a mandate on counties and municipalities and, if so, whether that mandate is funded or unfunded.”

The bill would also authorize any individual committee member to request a fiscal impact statement from an agency, irrespective of whether a proposed rule is anticipated to have an impact of greater than one million dollars.

Is this an amendment or substitution? Yes No

Is there an emergency clause? Yes No

b) Significant Issues

HB358 would erect significant barriers to the ability of executive agencies to adopt rules in accordance with those agencies' statutory authorities. The bill would create an "interim administrative rule oversight committee" that would make "recommendations" to state agencies regarding pending rules.

The legislature often grants agencies rule-making authority in statute in acknowledgement of an agency's ability to interpret the implementation of that statute at the agency through their expertise and institutional knowledge. This can be useful for the legislature, which is responsible for establishing policy in a wide range of issue areas and does not necessarily have the same depth of expertise that agencies may have or knowledge of the details of their programs and services. Additionally, when promulgating rules, agencies are required to follow a certain set of procedures involved in the rulemaking process as prescribed in the State Rules Act and must be ever mindful of adhering to the boundaries established by the statute. Agencies must ensure an opportunity for participation by the public through the public comment period and procedures are in place to allow for contesting rules that move beyond their statutory authority.

HB358 would authorize the committee the ability to recommend to the Legislature whether to amend or repeal a statute authorizing an agency to promulgate rules. This suggests that, if an executive agency does not adopt the recommendations of the committee, the committee might penalize the agency by seeking to have the agency's rulemaking authority removed in statute. It should be noted that the agency's rulemaking authority would have already been considered and granted by the legislature when it was originally passed by the legislature. Rulemaking authority is not automatically inferred upon an agency- it is authorized by the legislature. The committee would thus impose considerable political pressure on executive agencies to adopt the committee's conclusions, or to modify their rules to assuage the criticisms of committee members.

HB358 would compel agencies to generate "fiscal impact statements" on rules anticipated to generate costs (to any person or entity) of over one million dollars. However, the bill would also permit any committee member to request a fiscal impact statement regarding a rule, irrespective of whether the proposed rule is anticipated to meet that dollar threshold. This would likely result in fiscal impact statements having to be generated by state executive agencies for virtually every rule that they propose. Because agencies are not able to anticipate every conceivable fiscal impact that a proposed rule might have on every person or entity, such fiscal impact statements could be deemed deficient by opponents of a proposed rule. In this way, the bill would set an excessively burdensome standard for executive agencies to meet, and this requirement would likely function to undermine the validity of agency rules.

Perhaps most concerning is requiring that all proposed rules be reviewed by a legislative committee prior to adoption, which would serve to excessively politicize the rulemaking process. It is likely that this process would create delays in rulemakings and thereby interfere with agency operations. The bill would create new layers of bureaucracy and oversight in the rulemaking process and would create an opportunity for committee members to delay or impede the implementation of rules that they oppose. The prospect of routine review of agency rules, and potential interference by committee members, could

lead to a chilling effect on agency rulemakings, discouraging agencies from proposing ambitious rules or rules that could be sensationalized for political opportunism. The additional rulemaking requirements of the bill would also create new legal grounds for members of the public to challenge agency rules in court. HB358 would threaten the independence of the executive branch and could significantly impact the ability of state agencies to effectively create and implement rules.

2. PERFORMANCE IMPLICATIONS

- Does this bill impact the current delivery of NMDOH services or operations?

Yes No

See “Significant Issues”, above.

- Is this proposal related to the NMDOH Strategic Plan? Yes No

Goal 1: We expand equitable access to services for all New Mexicans

Goal 2: We ensure safety in New Mexico healthcare environments

Goal 3: We improve health status for all New Mexicans

Goal 4: We support each other by promoting an environment of mutual respect, trust, open communication, and needed resources for staff to serve New Mexicans and to grow and reach their professional goals

3. FISCAL IMPLICATIONS

- If there is an appropriation, is it included in the Executive Budget Request?

Yes No N/A

- If there is an appropriation, is it included in the LFC Budget Request?

Yes No N/A

- Does this bill have a fiscal impact on NMDOH? Yes No

HB358 would essentially compel NMDOH, and all other state agencies, to generate “fiscal impact reports” concerning all proposed rules. Agencies would have to dedicate additional staff and resources to the generation of those reports, and to addressing other concerns raised by the interim administrative rule oversight committee. In some situations, delays in rulemaking that result from the added administrative burdens of addressing the committee’s concerns could impact the availability of federal funding.

4. ADMINISTRATIVE IMPLICATIONS

Will this bill have an administrative impact on NMDOH? Yes No

See “Significant Issues”, above.

5. DUPLICATION, CONFLICT, COMPANIONSHIP OR RELATIONSHIP

None.

6. TECHNICAL ISSUES

Are there technical issues with the bill? Yes No

7. LEGAL/REGULATORY ISSUES (OTHER SUBSTANTIVE ISSUES)

- Will administrative rules need to be updated or new rules written? Yes No
- Have there been changes in federal/state/local laws and regulations that make this legislation necessary (or unnecessary)? Yes No
- Does this bill conflict with federal grant requirements or associated regulations?
 Yes No
- Are there any legal problems or conflicts with existing laws, regulations, policies, or programs? Yes No

8. DISPARITIES ISSUES

None.

9. HEALTH IMPACT(S)

None.

10. ALTERNATIVES

None.

11. WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

If HB358 is not enacted, an “interim administrative rule oversight committee” will not be created for the review of agencies’ proposed rules, and the State Rules Act will not be amended to require that agencies generate “fiscal impact statements” regarding proposed rules.

12. AMENDMENTS

None.